



Board of Adjustment Case Report

City of Raleigh
Department of City Planning
One Exchange Plaza
Raleigh, NC 27601
(919) 996-2682
www.raleighnc.gov

Case File: A-11-18

Property Address: N/A

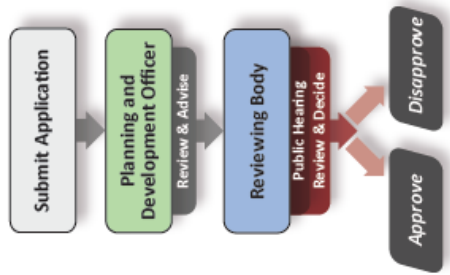
Appellant: Michael Birch

Project Contact: Michael Birch

Nature of Case: Michael Birch, appellant, requests an appeal of the Official Zoning Code Interpretation known as UI-15-17 as it relates to whether or not an "unenclosed building appurtenance that serves as a covered entry to a side entrance to the main house, and under which a vehicle may drive to access the detached garage and parking area behind the primary home" qualifies as a carport and is subject to the principal building setbacks or should be allowed as a setback encroachment governed by Section 1.5.4. of the Unified Development Ordinance.

To BOA: 1-8-18

Staff Coordinator: Eric S. Hodge, AICP



Sec. 10.2.11. Appeal of an Administrative Decision

A. Applicability

Any aggrieved person or any agency, officer, department, board or commission of the City, including the City Council, affected by any decision, order, requirement or determination relating to the interpretation, compliance or application of this UDO as made by an administrative official charged with the administration and enforcement of these provisions of the UDO may file an appeal in accordance with the requirements of this section.

B. Reviewing Body

Appeals of an administrative decision are heard by the Board of Adjustment except for Minor Work Certificates of Appropriateness, which are heard by the Raleigh Historic Development Commission.

C. Stay of Proceedings

1. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken (in most instances, this will be the Zoning Enforcement Administrator) certifies that, because of facts stated in the certificate, a stay would, in their opinion, cause imminent peril to life or property or that because the violation is transitory in nature, a stay would seriously interfere with the effective enforcement of this UDO. In that case, proceedings shall not be stayed except by a restraining order granted by of the reviewing body or a court, issued on application of the party seeking the stay, for due cause shown, with copy of notice to the officer from whom the appeal is taken.
2. An appeal shall not stop action lawfully approved; only actions claimed to be in violation of this UDO shall be stayed.

D. Filing Requirements

1. An appeal of any administrative decision shall be made by filing a written notice of appeal specifying the grounds for the appeal with the officer from whom the appeal is taken

and the reviewing body. Notice of appeal provided to the City Clerk is considered to be notice to the reviewing body.

2. Except when a different time period is established in this UDO, the notice of appeal shall be filed by persons who received either mailed notice or notice of decision pursuant to Sec. 10.2.1.C. within 30 days after the date of the application was decided; this time period is applicable to all representatives of such notified persons, including without limitation their tenants and option holders. For all other persons with standing, notice of appeal of any plot plan or site plan shall be filed within 30 days after the receipt from the earlier of any source of actual or constructive notice of the decision within which to file an appeal.
3. A notice of appeal of an administrative decision shall be considered made, when the notice of appeal is provided to the City Clerk and the officer from whom the appeal is taken. The date and time of filing shall be entered on the notice of appeal.
4. In addition to the notice of appeal, within 10 business days from the date of the notice of appeal, an application for an appeal of administrative decision shall be submitted to Planning and Development in accordance with Sec. 10.2.1.B.

E. Approval Process

1. Planning and Development Officer Action

- a. After notice of appeal is provided, the officer from whom the appeal is taken shall transmit to the reviewing body all the papers constituting the record upon which the action appealed from was taken.
- b. Planning and Development shall review the application for an appeal of an administrative decision in accordance with all applicable requirements of this UDO and advise the applicant.
- c. Planning and Development shall provide the notices required in Sec. 10.1.7. and Sec. 10.2.1.C.

2. Reviewing Body Action

Within 60 days after a completed application of an appeal of an administrative decision is filed, the reviewing body shall hold a quasi-judicial public hearing as set forth in Sec. 10.2.1.D.1. and provide notice as required in Sec. 10.2.1.C.6. Appeals filed to the City Manager shall not be heard at a quasi-judicial public hearing.

F. Showings

The showings for the reviewing body shall be those required for the original decision. The reviewing body may affirm or reverse the officer from whom the appeal is taken based on the applicable standards of this UDO.

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eating areas, plazas, courtyards, fountains, active recreation areas or public art.

3. Amenity areas installed in conjunction with an apartment or townhouse building type may contain any of the amenities listed above in subsection D.2, as well as courts, pools or fields used for active recreation.
4. All required outdoor amenity areas must provide one linear foot of seating for each 50 square feet of required open space area and one two-inch caliper tree for every 1,000 square feet of required open space area.
5. For all buildings greater than 7 stories in height, the minimum amount of required open space area specified in chapter 3 shall be increased. An additional 50 square feet of amenity area is required for each building story above the seventh story. In no case shall the required amenity area exceed 12% of the gross site area.

Sec. 1.5.4. Building Setbacks

A. Setback Types

There are 4 types of setback – primary street setback, side street setback, side setback and rear setback. Through lots are considered to have 2 primary street setbacks.

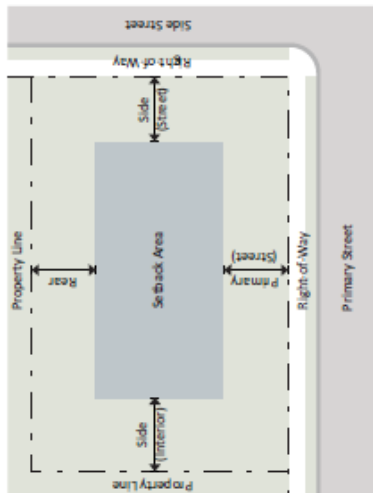
B. Measurement of Building Setbacks

1. Primary and side street setbacks are measured perpendicular from the edge of the existing or proposed right-of-way, whichever is greater.
2. Side setbacks are measured perpendicular from the side property line.
3. Rear setbacks are measured perpendicular from the rear property line or the edge of the existing or proposed right-of-way, whichever is greater, where there is an alley.

C. Multiple Street Frontage Lots

A multiple street frontage lot must designate at least 1 primary street. A lot may have more than 1 primary street. The Planning and Development Officer will determine which street or streets are the primary streets based on:

1. The street with the highest street classification;
2. The established orientation of the block;
3. The street abutting the longest face of the block;



4. The street parallel to an alley within the block; and
5. The street that the lot takes its address from.

D. Setback Encroachments

All buildings and structures must be located at or behind required setbacks, except as listed below. Underground structures covered by the ground may encroach into a required setback.

1. Building Features

- a. Porches (raised structures attached to a building forming a covered entrance) may extend up to 9 feet, including the steps, into a required setback, provided that such extension is at least 3 feet from the vertical plane of any lot line.
- b. Stoops (small raised platforms that serve as entrances to buildings) may extend up to 6 feet into a required setback, provided that the landing is at least 3 feet from the vertical plane of any lot line. Stoops may be covered but cannot be fully enclosed.
- c. Balconies (platforms projecting from the wall of a building with a railing along its outer edge, often accessible from a door or window) may extend up to 6 feet into a required setback, provided that the landing is at least 3 feet from the vertical plane of any lot line. Balconies can be covered but cannot be fully enclosed.

CHAPTER 1. INTRODUCTORY PROVISIONS | Article 1.5. Measurement, Exceptions & General Rules of Applicability
Sec. 1.5.5. Parking Setbacks

- d. Galleries (covered passages extending along the outside wall of a building supported by arches or columns that are open on 3 side), must have a clear depth from the support columns to the building's facade of at least 8 feet and a clear height above the sidewalk of at least 10 feet. A gallery may extend into a required street setback. A gallery may not extend into a required side setback.
 - e. Chimneys or flues may extend up to 4 feet, provided that such extension is at least 3 feet from the vertical plane of any lot line.
 - f. Building eaves, roof overhangs, awnings and light shelves may extend up to 5 feet, provided that such extension is at least 3 feet from the vertical plane of any lot line.
 - g. Bay windows, oriel, vestibules and similar features that are less than 10 feet wide may extend up to 4 feet, provided that such extension is at least 3 feet from the vertical plane of any lot line.
 - h. Unenclosed fire escapes or stairways may extend up to 4 feet into a required side or rear setback, provided that such extension is at least 5 feet from the vertical plane of any lot line.
 - i. Unenclosed patios, decks or terraces may extend up to 4 feet into a required side setback, or up to 8 feet into a required rear setback, provided that such extension is at least 5 feet from the vertical plane of any lot line.
 - j. Cornices, belt courses, sills, buttresses or other similar architectural features may project up to 1½ feet.
 - k. Handicap ramps may project to the extent necessary to perform their proper function.
 - l. If a variance is not required, a building feature may encroach into the right-of-way, provided a license for the use of the right-of-way is obtained from the City, which is terminable at will by the City.
2. **Mechanical Equipment and Utility Lines**
 - a. Mechanical equipment associated with residential uses, such as HVAC units and security lighting, may extend into a required rear or side setback, provided that such extension is at least 3 feet from the vertical plane of any lot line.
- b. Solar panels or wind turbines may extend into a required rear or side setback, provided that such extension is at least 3 feet from the vertical plane of any lot line.
 - c. Rainwater collection or harvesting systems may extend into a required rear or side setback, provided that such extension is at least 3 feet from the vertical plane of any lot line.
 - d. Utility lines located underground and minor structures accessory to utility lines (such as hydrants, manholes and transformers and other cabinet structures) may extend into a required rear or side setback.

E. Other Setback Encroachments

1. Fence and walls under Sec. 7.2.8.
2. Signs under Article 7.3. Signs.
3. Driveways under Sec. 8.3.5. Site Access.
4. Transitional and street protective yards under Sec. 7.2.4.

Sec. 1.5.5. Parking Setbacks

A. Parking Setback Types

There are 4 types of parking setback – primary street setback, side street setback, side setback and rear setback. Through lots are considered to have 2 primary street setbacks.

B. Measurement of Parking Setbacks

1. Primary and side street setbacks are measured perpendicular from the edge of the existing or proposed right-of-way, whichever is greater.
2. Side setbacks are measured perpendicular from the side property line.
3. Rear setbacks are measured perpendicular from the rear property line or the edge of the existing or proposed right-of-way, whichever is greater, where there is an alley.

C. Parking Not Allowed

On-site surface and structured parking must be located behind the parking setback line, where applicable. This requirement does not apply to on-street parking or apply to upper stories of a parking deck.

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Part 10A: Unified Development Ordinance
City of Raleigh, North Carolina

Article 12.1. General

Sec. 12.1.1. General Meaning of Words and Terms

- A. All words and terms used have their commonly accepted and ordinary meaning unless they are specifically defined in this UDO or the context in which they are used clearly indicates to the contrary.
- B. In the absence of court decisions or Board of Adjustment decisions specifically interpreting a provision in question, specific definitions listed in this UDO or previous interpretations of a provision by the Planning and Development Officer, the meaning of provisions shall be based on the following general hierarchy of sources:
 - 1. For a legal term, definitions in a legal dictionary or if not a legal term, definitions in an ordinary dictionary;
 - 2. Statements of the purpose and intent of particular sections or background reports and studies adopted or referred to in this UDO, although such documents cannot overrule a specific code provision;
 - 3. Minutes of discussions of legislative or advisory bodies considering adoption of the provision in question;
 - 4. Definitions of similar terms contained in Federal and State statutes and regulations; and
 - 5. Ordinary rules of grammar.
- C. When vagueness or ambiguity is found to exist as to the meaning of any word or term used, any appropriate cannon, maxim, principle or other technical rule of interpretations or construction used by the courts of this State may be employed to resolve vagueness and ambiguity in language.

Appeal of Administrative Decision Application



Department of City Planning | 1 Exchange Plaza, Suite 300 | Raleigh, NC 27601 | 919-996-2626

Nature of appeal (If more space is needed, submit addendum on separate sheet): Appeal of Official Zoning Code Interpretation UI-15-17. Specifically, we appeal the interpretation that an "unenclosed building appurtenance that serves as a covered entry to a side entrance to the main house, and under which a vehicle may drive to access the detached garage and parking area behind the primary home" qualifies as a carport and is subject to the principal building setbacks. It is our position that this building feature is within the setback encroachment exceptions of UDO Section 1.5.4.D.		OFFICE USE ONLY Transaction Number <i>A-11-18</i>
Provide all previous transaction numbers for Coordinated Team Reviews, Due Diligence Sessions or Pre-Submittal Conferences in the spaces below. If this property was the subject of a previous Board action, provide the case number.		
UI-15-17		

GENERAL INFORMATION		
Property Address N/A	Date 12/8/17	
Property PIN N/A	Current Zoning N/A	
Nearest Intersection N/A	Property size (in acres) N/A	
Property Owner Information		
Property Owner N/A	Phone N/A	Fax N/A
Owner's Mailing Address N/A	Email N/A	
Contact Person Information		
Project Contact Person Michael Birch, Morris, Russell, Eagle & Worley, PLLC	Phone 919.645.4317	Fax
Contact's Mailing Address 2235 Gateway Access Point, Ste. 201, Raleigh, NC 27607	Email mbirch@morrisrussell.com	
Property Owner Signature <i>[Signature]</i>	Email mbirch@morrisrussell.com	
Notary Sworn and subscribed before me this <u>8</u> day of <u>December</u> , 20 <u>17</u>	Notary Signature and Seal <i>[Signature]</i> My commission expires: <u>6-19-2022</u>	

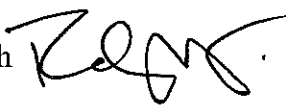
MICHAEL BIRCH
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To: Gail Smith, City Clerk
Travis Crane, Planning and Zoning Administrator

From: Michael Birch 

Date: December 8, 2017

Re: Notice of Appeal of UI-15-17

We hereby give this Notice of Appeal of UI-15-17, issued by Travis Crane, the Planning and Zoning Administrator, on December 1, 2017. We are appealing this decision of the Planning and Zoning Administrator because we disagree with the analysis and interpretation, specifically the interpretation that the described building feature is a carport. We intend to appeal this interpretation and ask the Board of Adjustment to adopt the interpretation we proposed in our Code Interpretation Request filed on November 2, 2017.

Exhibit A to Interpretation Request

- A. Request: The applicant requests an interpretation that the building feature described below qualifies as one or more of the building features listed in UDO section 1.5.4.D.1. which are permitted to encroach into a setback.
- B. Description of Building Feature: An unenclosed building appurtenance that serves as a covered entry to a side entrance to the main house, and under which a vehicle may drive to access the detached garage and parking area behind the primary home. Parking is not prohibited under the building appurtenance, as the driveway that passes underneath is not subject to any setback. The width of the driveway at the point at which it passes under the building feature is only wide enough for one car. There is no enclosed or habitable space above the covered area. The building appurtenance is supported by vertical columns in the four corners of the appurtenance, and is connected to the side of the main house. The building appurtenance is located on the side of the main house.
- C. UDO Section 1.5.4.D.1. Summary: This section of the UDO lists building features that may encroach into certain required setbacks, and provides a maximum encroachment and minimum setback for each building feature. The building features listed in section 1.5.4.D.1. that are most applicable to the above-described are (i) porch, (ii) balcony, (iii) building eave, roof overhang, awning or light shelf, and (iv) unenclosed patio, deck or terrace.
- D. Support for Interpretation: The above-described building feature should be considered as one or more of the building features listed in above Section C. for the following reasons:
1. None of the UDO definitions of the building features listed in above Section C. prohibit the driving or parking of vehicles on or under such building feature.
 2. A covered porch, a balcony at the second story that provides cover below, a roof overhang or awning, and a covered patio, deck or terrace all can functionally serve as a covered entry where a vehicle can park to allow passengers to enter the home.
 3. There is no side yard setback for a driveway or parking area (beyond the curb cut), such that the activity of driving or parking is not prohibited or limited by the UDO in that area that coincides with the building feature allowed to encroach into the side yard setback.
 4. The building feature described in above Section B. allows a vehicle to pass under/through in order to reach a detached garage and parking area behind the primary structure. Functionally, it is unlikely that a car will remain parked under the building feature described in above Section B. for an extended period of time because it would block access by other vehicles to the garage and main parking area given the width of the driveway as it passes under/through the building feature.

Official Zoning Code Interpretation



Department of City Planning | 1 Exchange Plaza, Suite 300 | Raleigh, NC 27601 | 919-996-2626

Requested Interpretation		Case Number
See attached Exhibit A.		UI-15-17
Site Address/PIN: NA		
Date Submitted: November 2, 2017	Date Issued: December 1, 2017	Code Sections 1.5.4.D; 12.1

STAFF ANALYSIS

The applicant has asked if a described building feature can encroach into the setback, given the allowance cited in section 1.5.4.D of the UDO. This section identifies multiple features that may extend into the required setbacks for primary structures. The following specific elements are listed in this section:

1. porches;
2. stoops;
3. balconies;
4. galleries;
5. chimneys and flues;
6. building eaves, overhangs awnings and light shelves;
7. bay windows, oriels, vestibules;
8. unenclosed fire escapes or stairways;
9. unenclosed patios, decks or terraces;
10. cornices, belt courses, sills, buttresses or other similar architectural features; and
11. handicap ramps

The applicant has described a building feature that is an "unenclosed building appurtenance that serves as a covered entry to a side entrance to the main house, and under which a vehicle may drive to access the detached garage and parking area behind the primary home."

In determining whether or not this feature is allowed to encroach into a setback, staff must compare the described feature to the list of specific elements above. The applicant states that this described element is most like a porch, balcony, building eave, roof overhang, awning or lightshelf and unenclosed patio, deck or terrace.

The UDO provides a definition of a porch (raised structure attached to a building forming a covered entrance) and a balcony (platform projecting from the wall of a building with a railing along its outer edge, often accessible from a door or window). A porch is typically a raised structure that provides a landing area that connects steps to a door. A balcony is typically an elevated structure that provides egress from a door or window. A balcony typically does not provide egress from the platform to the ground by way of steps.

A building eave or roof overhang are generally considered projections of a roof form that are comprised of roof truss elements. These elements typically do not have any supporting features that extend to the ground. An awning is typically a cover that extends above a window to provide shade or visual interest on a building façade, most commonly found in non-residential buildings located within an urban environment. A lightshelf is an element attached to a building façade above a window that is used to transmit light to the interior of a building. Staff can find no commonality between the described element and a lightshelf.

The final category of element identified by the applicant is unenclosed patio, deck or terrace. These elements can be elevated or located at grade. Patios and decks are most commonly used for human congregation or activity. A terrace can be used in a similar fashion. The key descriptor for this grouping of elements is "unenclosed", which is an indicator that walls are not contemplated with these elements.

Official Zoning Code Interpretation



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Staff did not provide a full analysis of the remaining features, as they all have common meaning that in no way relate to the applicant's description. The applicant did not analyze these remaining features either. The elements not analyzed are chimney and flue; bay window, oriels and vestibules; unenclosed fire escape or stairway; cornices belt courses, sills, buttresses or other similar architectural features; and handicap ramps.

The applicant states that this feature would be attached to the house that provides a covered entry into a side entrance to the main house. The area under the cover could be used for short-term vehicular parking, although the applicant states it would be unlikely that parking would occur long term as it would block access to a garage behind the house. The feature would be supported by vertical columns and is connected to the side of the house.

STAFF INTERPRETATION

The intent of section 1.5.4.D is to allow certain elements to encroach into a required setback. The building features identified in this section can be placed in one of three categories: architectural building feature, an entrance into a building, or requirement to meet state or federal law. The first category of elements is intended to allow minor architectural details, such as a sill, cornice or bay window to encroach into a setback. The second category of elements is intended for human passage or congregation, such as porch, patio, stoop or balcony. The third category is a necessity of a higher law, such as a fire escape or handicap ramp.

In reviewing the applicant's description of the building feature, staff does not find consistency between the described feature and analyzed building elements. While the applicant has not provided architectural drawings, the applicant describes this feature as an extension on the side of the house, supported by columns with a paved surface below. The UDO provides a definition for a porch and a stoop, with each definition specifying that these are raised structures. The applicant has stated this feature will be located at grade. Similarly, a balcony is defined as a platform projecting from a building with a railing at the outer edge that is accessible from a door or window. The intent of a balcony is that there might be human activity on top of the balcony, but not underneath. Staff does not find that the described element is similar enough in nature to be classified as either a porch or a balcony.

When the UDO does not define a term, section 12.1.1 states that an ordinary dictionary shall be consulted. In reviewing the identified building elements and the applicant's description, staff believes this to be most similar to a carport. The feature will not have any walls and will produce a covered area for the unloading of a vehicle. This description aligns with the common and everyday definition of carport, as found in many reference dictionaries, such as Merriam-Webster, Oxford, Collins and countless other dictionaries.

A carport is not similar enough in nature to the list of building elements that may encroach into a setback. In past similar situations, staff has determined that a carport must meet all primary setbacks and cannot encroach into any setback.

SIGNATORY

A handwritten signature in black ink, appearing to read "TRA".

Travis R. Crane, Planning and Zoning Administrator